

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA

v.

NOE SANTIAGO-LOPEZ

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Case No.: 2:05-CR-215-T

RESPONSE TO DEFENDANT'S MOTION IN LIMINE

COMES NOW the United States of America, by and through Leura Garrett Canary, United States Attorney for the Middle District of Alabama, and files its response to Defendant's Motion in Limine, filed on or about October 4, 2005, as follows:

1. Defendant moves to preclude the government from introducing evidence that the defendant entered and remained in the United States illegally and is not a citizen of the United States and as grounds for such, states that such testimony is irrelevant pursuant to Rule 401, 402, 403 and 404(b) of the Rules of Federal Criminal Procedure.

2. The government agrees that it will not raise the issue of defendant's illegal entry or presence in the United States into evidence or argument. The government does argue that it should be allowed to present evidence pertaining to defendant's lack of United States citizenship.

3. The defendant is charged in Count 2 of the indictment with, "... knowingly, with intent to deceive, falsely representing a number to be the Social Security account number assigned by the Secretary to him when, in fact, such number is not the Social Security number assigned by the Secretary to him, in violation of Title 42, United States Code, Section 408(a)(7)(b)."

4. The government must establish the following to establish a violation of this statute:

- a. The defendant knowingly and with intent to deceive, falsely represented a number to be the Social Security account number assigned by the Secretary to him; and
- b. The number represented is not the Social Security account number assigned by the Secretary to the defendant.

5. Therefore, it is necessary that the government establish that defendant knew that the number he represented to be his, was not his. The fact that defendant is not a citizen of the United States and knew that he was not a citizen of the United States, at the time he represented the Social Security account number to be his, will be established by the government through testimony that defendant was not a citizen of the United States and never applied for nor received a Social Security account number. Such testimony is permissible and necessary pursuant to Federal Rules of Criminal Procedure 401 and 402. The probative value of this evidence is not substantially outweighed by possible prejudice of the jury, nor will such evidence confuse the jury.

6. Based on the foregoing, the United States respectfully requests this Court deny Defendant's Motion in Limine in part.

Respectfully submitted, this the 7th day of October, 2005.

LEURA GARRETT CANARY
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Christine A. Freeman.

Respectfully submitted,

LEURA GARRETT CANARY
UNITED STATES ATTORNEY

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